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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEVIK KODAVERDIAN, R. DAVID GARAKANIAN,
MICHAEL W. HODGES, and RODNEY CONRAD

Appeal 2009-008655
Application 10/638,096
Technology Center 3700

Before: WILLIAM F. PATE III, JENNIFER D. BAHR, and STEFAN
STAICOVICI, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-9, 11-13, 15-24, 26-28, 30, and 32-35. Claims 10, 14, 25, 29, and 31 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A wood floor edger comprising:

a first housing comprising a first opening, a second opening, a third opening, and a rotatable abrasive disc located proximate said first opening, said rotatable abrasive disc having a diameter greater than six inches;

a motor at least partially located in said second opening and drivingly connected to said abrasive disc;

a fan located in said first housing, said fan being drivingly connected to said motor; and

an air path extending between said first opening and said third opening by way of said fan.

REFERENCES

Howard	US 5,392,568	Feb. 28, 1995
Gurstein	US 5,870,791	Feb. 16, 1999
Oda	US 6,447,383 B2	Sep. 10, 2002
McCutchen	US 6,540,598 B1	Apr. 1, 2003
Buser	US 6,935,939 B1	Aug. 30, 2005

REJECTIONS

- I. Claims 1, 4-9, 11, 13, 15-17, 20-24, 26, 28, 30, and 33-35 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gurstein. Ans. 3.
- II. Claims 12 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gurstein in view of Buser, Oda, or Howard. Ans. 4.
- III. Claims 2, 3, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gurstein and McCutchen. Ans. 4-5.

SUMMARY OF DECISION

We REVERSE.

OPINION

Independent claims 1 and 17 require a floor edger having, in relevant part, a fan and an abrasive disc proximate a first opening, with an air path extending between the first opening and a third opening by way of the fan. The third opening is described in the Specification as a port for a vacuum attachment, to collect dust. Spec. 4, ll. 20-25, claims 12 and 27. The Examiner found that Gerstein describes a floor edger having a fan 18 and an abrasive disc 6 proximate a first opening, with an air path extending between the first opening and a third opening (24) by way of the fan. Ans. 3.

Appellants raise the dispositive issue of whether Gerstein describes "an air path extending between said first opening and said third opening by way of said fan," as recited in claim 1. Appeal Br. 6-8. In particular, Appellants argue that the air paths in Gerstein do not extend proximate the disc 6. Appeal Br. 7.

We find that fan 18 of Gerstein draws in air through inlet slots 24 for flow in two directions, labeled A and B in figure 4. Col. 5, ll. 51-65. Of particular relevance is air path A, which moves air "straight down through cooling fan 18 through the fins of motor 8." *Id.*; see also fig. 4. The Examiner's rejection is based on this air path. Initially, we find that Gerstein does not explicitly state where the air passing through the fins of the motor exits. We find that sleeve 10 is slightly "tampered" [sic: tapered] along its longitudinal axis from its top to bottom opening, with motor 8 likewise "tampered" "so that its insertion in sleeve 10 results in good engagement." Col. 5, ll. 29-32. This description of the sleeve would appear to suggest that

sleeve 10 does not have a bottom wall that would impede air flowing from the fan through the fins of the motor and adjacent the polishing disc 6, as proposed by the Examiner. However, we find that figure 5 depicts sleeve 10 obscuring the fins and at least the visible portions (from the perspective in fig. 5) of the bottom of the motor. Figure 6 likewise depicts the sleeve 10 (unlabeled) as covering at least a portion of the bottom of the motor. Thus, the figures cast doubt as to whether the "bottom opening" of the sleeve extends so as to provide air communication between the passages through the fins at the bottom of the motor and the opening adjacent the disc 6. Consequently, while there may be some support for the Examiner's findings regarding the air path, we find that Gerstein as a whole provides an ambiguous description of the path, portions of which conflict with, or at least cast doubt on, the Examiner's findings.

An anticipation rejection cannot be predicated on an ambiguous reference. Rather, disclosures in a reference relied on to prove anticipation must be so clear and explicit that those skilled in the art will have no difficulty in ascertaining their meaning. *In re Turlay*, 304 F.2d 893, 899 (CCPA 1962). Given the conflicting descriptions of the collar 10 in the Specification and the figures, and lack of an explicit disclosure as to where the air flowing past the cooling fins exits, we agree with Appellants that the polishing device of Gurstein does not anticipate a floor edger having an air path extending between a first and third opening by way of a fan, as called for in claims 1 and 17.

As such, we are persuaded that the rejection of claims 1, 4-9, 11, 13, 15-17, 20-24, 26, 28, 30, and 33-35 as anticipated by Gurstein is in error. The Examiner's obviousness rejections (II and III) rely on the same insufficiently supported finding and the Examiner does not make any

additional findings or propose any modifications to the device in Gurstein to make up for the deficiency of Gurstein discussed above. Thus, we are persuaded that the rejections of dependent claims 12 and 27 as unpatentable over Gurstein in view of Buser, Oda, or Howard and dependent claims 2, 3, 18, and 19 as unpatentable over Gurstein and McCutchen are likewise in error.

DECISION

For the above reasons, we reverse the Examiner's decision.

REVERSED

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